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Subject: Case Law Bulletin Sept. 18, 2017
Date: Friday, September 29, 2017 9:42:21 AM

EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW

| Case Law Bulletin

Week of September 18, 2017

Third Circuit

[Alimbaev v. Att'y Gen. of United States](#), No. 16-4313, 2017 WL 4228789 (3d Cir. Sept. 25, 2017) (Board Review)

The Third Circuit granted the PFR, holding that the Board misapplied the clearly erroneous standard in reversing the IJ's credibility determination by "effectively reweighing the testimony and engaging in the very 'de novo review of findings of fact determined by an immigration judge,'" that is prohibited by 8 C.F.R. § 1003.1(d)(3)(i).

Ninth Circuit

[Chavez-Garcia v. Sessions](#), No. 14-72172, 2017 WL 4171472 (9th Cir. Sept. 21, 2017) (Board Appeal-Waiver)

The Ninth Circuit granted the PFR, holding that the alien's departure from the U.S. alone does not meet the constitutional requirements of a valid waiver of the right to appeal his removal order to the Board because the IJ failed to expressly inform the alien of the departure-waiver regulation (8 C.F.R. § 1003.3(e)).

Tenth Circuit

[United States v. Devries](#), No. 16-8113, 2017 WL 4220287 (10th Cir. Sept. 22, 2017) (unpublished) (**COV**)

The Tenth Circuit affirmed the district court's judgment, concluding that petitioner's conviction in violation of Wyo. Stat. § 6-2-502(a)(iii) (threatening to use a drawn deadly weapon) qualifies as a crime of violence under U.S.S.G. § 4B1.2(a)'s force clause (same as 18 U.S.C. § 16(a)).

Eleventh Circuit

[Vilchiz-Bello v. U.S. Att'y Gen.](#), No. 16-16764, 2017 WL 4231554 (11th Cir. Sept. 25, 2017) (unpublished) (**CIMT**)

The Eleventh Circuit denied the PFR, agreeing with the Board that petitioner is statutorily ineligible for cancellation because of his conviction in violation of Fla. Stat. § 817.568(2)(a), a third-degree felony (criminal use of personal identification information), categorically qualifies as a CIMT.